

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2057 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

SHRIMATI SHASHI DILBHADUR TAMANG

Versus

STATE OF GUJARAT

Appearance:

MS BANNA DATTA learned advocate for Petitioner

MR DP JOSHI learned AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 05/11/1999

ORAL JUDGEMENT

1. Heard Learned Advocate Ms. Banna Datta on behalf
of the petitioner and learned AGP Mr. D.P. Joshi for the
respondents.

2. The detention order dtd. 29/1/99 passed by the
respondent NO. 2 - Police Commissioner, Surat City, Surat
against the petitioner in exercise of powers conferred
under Sec.3(1) of Gujarat Prevention of Anti-social

Activities Act, 1985 (PASA for short), is challenged in the present proceedings under Article 226 of the Constitution of India.

3. The grounds of detention served to the petitioner, copy of which is produced on record on running page No. 12, interalia indicate that Criminal Case Vide C.R. No. II 3011 of 1999 was registered at Chawk Bazar Police Station against the petitioner for the offence made punishable under immoral Traffic (Prevention) Act, 1956. It also indicates another case vide C.R. NO. 3035/99 under the same Act for the similar offence, which was registered on 12/1/99. Over and above that, two witnesses on assurance of anonymity have given information regarding incident dtd. 10/1/99 and 23/1/99 pertaining to antisocial activity of the petitioner. On the basis of the said material, the respondent NO. 2 has come to the conclusion that the petitioner is a immoral traffic offender within the meaning of Sec.2(g) of PASA. That enforcement of general provisions of law are insufficient to prevent the petitioner from continuing her illegal antisocial activity which prejudicially affect the maintenance of public order and thereby the detention order is necessary.

4. The petitioner has challenged the impugned order on numerous grounds, it is contended on behalf of the petitioner that while passing the impugned order, the detaining authority has failed to consider the less drastic remedy of cancellation of bail available under Sec.437(5) of Cr.P.C. which has also vitiated the subjective satisfaction rendering the impugned order bad in law.

5. That in the matter of Jubedabibi Vs. State of Gujarat, reported vide '95(2) GLR page 1134, the Division Bench of this Court has expressed the view to the effect that non-consideration of less drastic remedy like cancellation of bail available under Sec. 437(5) of Cr.P.C. amounts to non-application of mind vitiates subjective satisfaction of the detaining authority and rendering the detention order invalid. That the said view has been approved and endorsed in the proceedings of Letters Patent Appeal NO. 1056/99 decided by this Court on 15/9/99 (Coram C.K. Thakkar and A.L. Dave, JJ).

6. In the instant case, scrutiny of grounds of detention disclose that the detaining authority has observed while supplying grounds of detention that the petitioner detenu was released on bail in respect to both

the criminal cases registered against her. That thereby the petitioner is likely to continue her anti-social activity and hence, the detention order is necessary. However, the said observation do not disclose that whether the detaining authority has ever considered less drastic remedy claiming cancellation of bail, already granted to the petitioner in pending Criminal Case. The said non-consideration of cancellation of bail has vitiated the subjective satisfaction rendering the impugned order bad in law.

7. As the petition succeeds on the above said grounds alone, it is not necessary to consider other contentions raised by the petitioner.

8. On the basis of the aforesaid observation, the petition is allowed. The detention order dtd. 29/1/99 passed by the respondent No.2 - Police Commissioner, Surat City, Surat against the petitioner-detenu is hereby quashed and set aside. The petitioner-detenu namely Shrimati Shashi Dilbahadur Tamang is ordered to be set at liberty forthwith, if not required in any other case.

Rule to that extent is made absolute.

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